CHIN NAM BEE DEVELOPMENT SDN. BHD.

v.

TAI KIM CHOO & ORS.

HIGH COURT MALAYA, MUAR
EUSOFF CHIN J
[CIVIL APPEAL NO. 11-5 OF 1986]
21 JANUARY 1988

CONTRACT: *Sale/Purchase Agreement to purchase house at RM29,500 - Payment of additional sum of RM4,000 - Whether payment made was an increase in purchase price and obtained by means of threat and coercion - Meaning of "coercion" - Whether RM4,000 paid was refundable - Section 73 Contracts Act - Word "coercion" to be given its ordinary and general meaning.*

The respondents/plaintiffs had each entered into a Sale/Purchase Agreement to purchase a house each at RM29,500 to be constructed by the appellants/defendants. However, the dispute which led to the respondents filing actions in the Magistrate's Court Batu Pahat concerned the additional payment of RM4,000 by each plaintiff to the defendants. The respondents alleged that the additional sum of RM4,000 was paid under threat and coercion by a director of the appellant Company.

At the conclusion of the trial, the learned Magistrate found that the additional payment of RM4,000 by the respondents to the appellants was an increase in the purchase price and was obtained by means of threat and coercion. Hence, this appeal.

Held:

[1] There was no good or sufficient cause to disturb the findings of the Magistrate that the payment of the RM4,000 to the appellants was not voluntary. The respondents have been threatened to do so on pain of having their bookings for the houses cancelled.

[2] The word "coercion" in the context of s. 73 of the Contracts Act 1950 should be given its ordinary and general meaning since there is nothing under s. 15 which states that the word "coercion" should apply throughout the Act. The definition of "coercion" in s. 15 should only apply for the purpose contained in s. 14, it specifically states so.

[3] Since there was no good or sufficient cause to upset the findings of facts by the Magistrate that the respondents in this case had paid the extra sum of RM4,000 to the appellants without consideration but paid under threat by the appellants to cancel their bookings for their houses, the amounts paid by the respondents must be refunded to them under s. 73 of the Contracts Act.

[Appeal dismissed with costs.]

Cases referred to:
C.M. Naested v. The State of Perak [1925] FMSLR 185
Kanhaya Lal v. National Bank of India Ltd. [1913] ILR XL 598

Legislation referred to:
Contracts Act 1950, ss. 2, 10, 11, 12, 13, 14, 15, 16, 73
Contract Act [Ind], ss. 10, 14, 15, 72

For the appellants - K. Chandra (Gan with him); M/s. K. Chandra & Co.
For the respondents - Tan Hock Kim; M/s. Tan & Tan

JUDGMENT

Eusoff Chin J:

The plaintiffs (respondents) in the 4 consolidated Civil Suits Batu Pahat Magistrate's Court Civil Action No. 234/80, 235/80, 289/80 and 292/80 were purchasers of houses to be constructed by the defendants (appellants). Each plaintiff had signed a sale and purchase agreement to purchase a house at RM29,500. There was no dispute on this.

The dispute concerned the payment by each plaintiff of an additional sum of RM4,000 to the defendants. The plaintiffs alleged that they were threatened and forced by Yap Soon Kean (DW2) a director of the defendant Company to pay the RM4,000 each to the defendants as an increase in the purchase price, or else the defendants would cancel their bookings for the houses.

DW2 said that the RM4,000 was for cost of additional works to be done to each house not on the request of the plaintiffs but agreed to by them at his oral suggestion. The Magistrate having heard the witnesses formed the conclusion that the RM4,000 was an increase of the cost of each house paid by each plaintiff under threat that the defendants would cancel his booking for the house. The Magistrate found that the plaintiffs had not agreed to the increase of RM4,000 because under the sale and purchase agreement, cl. 13, a request for additional works must be made in writing.

The defendants had alleged that the plaintiffs had agreed to the additional work orally. The Magistrate found that this was not so. He failed to understand how the defendants could have fixed RM4,000 for the additional works in April 1979, when in fact the architect (DW1) employed by the defendants for the additional work gave his quotations for the additional work to the defendants only some six months later, on 28 September 1979, and the final instruction was given by the defendants to the contractor for the additional work on 10 November 1979. According to the defendants the additional works were completed by the end of 1980. The plaintiffs however did not even know what were the additional works which had been done to their houses. DW2 had admitted that the additional works cost RM3,570 but he had asked the plaintiffs to pay RM4,000 each so that the defendants could make some profits.

The Magistrate in his judgment stated:

> On going through the evidence of all the plaintiffs in the four cases and that of the defence I came to the conclusion that on the balance of probabilities.
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> 1. None of the plaintiffs in the four cases had asked for the alleged additional works.
> 2. The defendant Company through DW2 had obtained the extra (RM4,000) payment by means of threats and coercion.
> 3. The payment was in fact an increase in the purchase price.
> 4. The request for quotations for the alleged additional works was only made as a cover up by the defendant company as a result of protests by its customers (including the plaintiffs) over the extra payment.

Having read the record of appeal, I found no good or sufficient cause to disturb the findings of the Magistrate that the payment of the RM4,000 to the defendants was not voluntary, the plaintiffs having been threatened to do so on pain of having their bookings for the houses cancelled.

The plaintiffs' (respondents') Counsel submitted that the RM4,000 was refundable to the plaintiffs under s. 73 of the Contracts Act; (Act 136).

The main ground of appeal by the defendants is that the RM4,000 was paid voluntarily, and not under any coercion. The appellant's (defendants') learned Counsel submitted that even if there was a threat to cancel the bookings of the houses it did not amount to 'coercion' as defined under s. 15 of the Contracts Act 1950, and therefore the plaintiffs could not avail themselves of the provisions of s. 73 of that Act. He cited an unreported judgment in Johore Bahru High Court Civil Suit No. 76/1978, (copy of the judgment tendered to me in Open Court) in which the Court there formed the opinion that the definition of 'coercion' in s. 15 applies to s. 73 of the Act. However the learned Judge in that case concluded that the plaintiffs there had, for business reasons, consented to agree to pay the increased purchase price of their houses.

With respect, I do not agree to the learned Counsel's contention that the definition of the word 'coercion' in s. 15 of the Act applies to s. 73.

Sections 14 and 15 of the Contracts Act state:

Free consent: 14. Consent is said to be free when it is not caused by:

(a) coercion, as defined in s. 15;

(b) undue influence, as defined in s. 16;

(c) fraud, as defined in s. 17;

(d) misrepresentation, as defined in s. 18; or

(e) mistake, subject to ss. 21, 22 and 23.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

Coercion: 15. "Coercion" is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation - It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

Illustration

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Penal Code.

A afterwards sues B for breach of contract at Taiping.

A has employed coercion, although his act is not an offence by the law of England, and although s. 506 of the Penal Code was not in force at the time when or place where the act was done.

The Contracts Act 1950 is divided into Ten (10) Parts. Part III, deals with "of contract, voidable contracts and void agreements", and contains ss. 10 to 16. Nowhere under this Part III is found a clause as those found in s. 2, Part I of the Act, to the effect that words and expressions as defined in s. 2, are to be given those defined meanings unless the contrary intention appears from the contexts. The opening sentence of s. 2 of the Act states:

In this Act, the following words and expressions are used in the following senses, **unless a contrary intention appears from the context:**

...

...

Section 73 of the Contracts Act 1950 comes under Part VI of the Act, which deals with matters described as:

Of Certain Relations Resembling Those Created by Contract

Section 73 of the Act states:

73. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Illustrations

(a) A and B jointly owe RM100 to C. A alone pays the amount to C, and B, not knowing this fact, pays RM100 over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

It would be difficult to give effect to s. 73 illustration (b) if the word 'coercion' is to be given the meaning as defined in s. 15 of the Act. They appear to be in conflict with each other. Therefore the word 'coercion' in the context of s. 73 of the Act should be given its ordinary and general meaning since there is nothing under s. 15 which says that the word 'coercion' should apply throughout the Act. The definition of 'coercion' in s. 15 should only apply for the purpose contained in s. 14, as s. 14 of the Act specifically says so.

In *C.M. Naested v. The State of Perak* [1925] FMSLR 185, the plaintiff applied for a grant of 23,000 acres of land in the mukim of Utan Melintang. Upon the approval of his application he paid a certain sum for survey fees calculated upon the area approved as being one block. In the subsequent survey the land was cut up into 16 blocks, but plaintiff was not informed that this was being done. Upon demand made by the District Officer the plaintiff's agents Messrs. Harrisons and Crosfield paid a further sum for survey fees, the calculation of the amount being based upon the 16 blocks.

The plaintiff sued to recover the sum so paid by Messrs. Harrisons and Crosfield.

The trial Judge held that the only fees payable were the prescribed fees upon the approved area, that the demand for further fees was not authorised by the Land Rules 1904, but that the payment being a voluntary payment, made by the agents within the scope of their general authority, the plaintiff could not recover.

He therefore dismissed the action.

Plaintiff appealed.

The Supreme Court held that the payment made by Messrs. Harrisons and Crosfield was under the circumstances not a voluntary payment, and was made without consideration, and that plaintiff was entitled to recover the money, with interest, both as damages for breach of contract, and as damages in tort.

Woodword CJ said at p. 201:

> Under these circumstances, it is impossible to consider the payment as a voluntary one. The parties were not on equal terms. On the one side was the plaintiff, a private individual, and his agents, a mercantile firm, on the other the Government of the State, which had the power of saying "If you do not pay you shall not have your grant".

and further said at p. 203:

> So in this case, the evidence shows that Messrs. Harrisons and Crosfield paid the money, not voluntarily, but to prevent the threatened consequences of non-payment.
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> I think that the plaintiff is entitled to recover the money as a payment made without consideration, and under coercion, within the meaning of s. 72 of the Contract Enactment.

The Privy Council in *Kanhaya Lal v. National Bank of India Ltd.* [1913] ILR XL 598, held that the meaning of the word 'coercion' as defined under s. 15 of the Indian Contract Act, (Act IX of 1872) should be confined to the interpretation of the word 'coercion' as found under s. 14 of the Indian Act, and that the word 'coercion' as found in s. 72 of the Indian Contract Act should be given its ordinary meaning. Lord Moulton, delivering the judgment of the Privy Council at p. 611 to 613 said:

> The main contention, however, was that the allegations in the plaint did not show "coercion" according to Indian Law. It was contended that nothing could be "coercion" under Indian Law unless it satisfied the definition of "coercion" which is found in s. 15 of the Indian Contract Act and that the allegations in the plaint failed so to do because they did not show that the "unlawful detaining or threatening to detain" the property was "with the intention of causing any person to enter into an agreement." Their Lordships are of the opinion that this argument is not sound and that it is based on a fundamental misunderstanding of the object and effect of s. 15 of the Indian Contract Act.
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> Section 15 forms part of a chapter which specially deals with the requisites of a valid contract. This chapter commences with s. 10, which may be regarded as the fundamental section, and which reads as follows:
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> > All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared to be void.
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> The sections immediately following proceed to define the terms used in this fundamental section. Sections 11 and 12 are devoted to the interpretation of the phrase "competent to contract." Section 13 deals with the term "consent". Sections 14 to 18 deal with the phrase "free consent." In so doing s. 14 commences by defining when consent is said to be "free" and lays down that it is so when it is not caused by "coercion" as defined by s. 15, "or undue influence, fraud," etc. It will therefore be seen that s. 14 relates to "free consent" as an element in the making of contracts. It is natural, therefore, that when "coercion" comes to be defined in s. 15 for the purposes of s. 14 it is defined as follows:
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> > 'Coercion' is the committing or threatening to commit any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement.
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> It is clear, therefore, that this definition of "coercion" is solely a definition which applies to the consideration whether there has been "free consent" to an agreement so as to render it a contract under s. 10. This explains why in the definition of "coercion" it is limited to an unlawful act done "with the intention of causing the person to enter into an agreement." But it would be to make nonsense of the statute if it were to be taken to mean that "coercion"

in a legal sense could only exist if the object was to bring about a contract. Indeed such an interpretation would render the Act inconsistent with itself. Section 72, which is in Chapter 5, which deals with "certain relations resembling those created by contract", reads as follows:

> A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.

and illustration B to that section reads as follows:

> A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

It is possible to contend that the coercion referred to in this section or in the above illustration is "with the intention of causing any person to enter into an agreement." The word "coercionn" must therefore be there used in its general and ordinary sense as an English word, and its meaning is not controlled by the definition in s.15. that definition is expressly inserted for the special object of applying to s. 14 i.e., to define what is the criterion whether an agreement was made by means of a consent extorted by "coercion" and does not control the interpretation of "coercion" when the word is used in other surroundings.

Having read and compared ss. 10, 14, 15 and 72 of the Indian Contract Act, I found them to be in *pari materia* with ss. 10, 14, 15 and 73 of our Contracts Act 1950.

Since I have found no good or sufficient cause to upset the findings of facts by the Magistrate that the plaintiffs respondents in this case had paid the extra RM4,000 to the defendants/appellants without consideration, but paid under threat by the appellants to cancel their bookings for their houses, the amount paid by the plaintiffs must be refunded to them under s. 73 of the Contracts Act 1950.

I therefore dismissed the appeal with costs.

Also found at [1988] 1 CLJ 319